STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY KIMAR LAGRONE,

Defendant-Appellant.

UNPUBLISHED
January 8, 2008

No. 273923
Oakland Circuit Court
LC No. 2006-208734-FH

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of possession with intent to deliver between 50 and 450 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession of marijuana, MCL 333.7403(2)(d). He was sentenced as an habitual offender, second offense, MCL 769.10, to prison terms of 8 to 30 years for the cocaine delivery conviction, and to a concurrent one-year term for the marijuana possession conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Oakland County Sheriff Sergeant Miles received a tip from a confidential informant that defendant was going to be delivering two and one-half ounces of cocaine between 6:00 and 7:00 p.m. at a Home Depot. Apparently due to defendant's conversations with the informant, Miles believed that defendant would have the cocaine and $1,600 on his person. The informant accompanied Miles and other officers to the store. After they arrived, the police learned that defendant was at a car wash in Pontiac, and moved to that location. Defendant, who was accompanied by another man, was standing outside a minivan. Miles watched defendant go to a nearby garbage can, place something inside it, and then stand next to the garbage can as if guarding it. The police arrested defendant and the other man. The police found 70.3 grams of cocaine inside the can, and 20.8 grams of marijuana in the van's glove box. Officers also found $300 on defendant's person. After defendant was arrested and informed of his rights, he made a number of incriminating statements, including a blanket admission of guilt.

Defendant first argues that the trial court abused its discretion when it conducted voir dire because he was denied a reasonable opportunity to determine whether the jurors were subject to challenge. However, defense counsel did not object to the way in which the trial court conducted voir dire. In addition, the trial court repeatedly provided other opportunities for questioning, but defense counsel declined to ask any questions of the prospective jurors. Under the circumstances, defense counsel's actions have caused defendant to waive this issue for appeal. A

"'[d]efendant should not be allowed to assign error on appeal to something which [he] deemed proper at trial. To do so would allow defendant to harbor error as an appellate parachute.'" *People v Milstead*, 250 Mich App 391, 402 n 6; 648 NW2d 648 (2002), quoting *People v Roberson*, 167 Mich App 501, 517; 423 NW2d 245.

Defendant also challenges the introduction of the details of the actual police "tip" that led to his arrest. Defendant did not object to the introduction of this evidence. We review unpreserved constitutional issues for plain error affecting a defendant's substantial rights; i.e., that affected the outcome of the proceeding. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). A plain error merits reversal only when a defendant is actually innocent, or the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id*. at 773.

Miles testified that he received information that "defendant . . . was going to be delivering approximately two and a half ounces of cocaine between the time of 6:00 p.m. and 7:00 p.m. at the Home Depot in the parking lot there off Orchard Lake Road." Defendant contends that the informant's tip was inadmissible hearsay, because it was used to prove the truth of the matter asserted. See MRE 801(c), MRE 802. We find merit in plaintiff's argument that the testimony was not used to prove the matter asserted, but instead was used to show where the police went to investigate defendant; i.e, first to Home Depot and then to the car wash, and why they chose these locations. In addition, we note that the statement was not used for its truth, because it was not used to show that defendant actually brought the cocaine to the Home Depot. Evidence that is admissible for one purpose is not inadmissible because its use for a different purpose is precluded. *People v VanderVliet*, 444 Mich 52, 73; 508 NW2d 338 (1993), amended 445 Mich 1205 (1994); *People v Coleman*, 210 Mich App 1, 5; 532 NW2d 885 (1995). A limiting instruction might have been appropriate had defendant raised an objection, but the trial court did not plainly err in permitting the introduction of this testimony.

Moreover, even were we to find that the evidence was erroneously introduced, we would hold that defendant cannot show that he is entitled to relief. The evidence against defendant was overwhelming, and included a blanket admission of the crime by defendant in the hope that he could turn in someone farther up the chain in return for favorable treatment.

Defendant raises a concurrent claim of ineffective assistance of counsel. In order to preserve the issue of ineffective assistance of counsel, a defendant must move for a new trial or a hearing pursuant to *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973), before the trial court. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005). Where the defendant fails to preserve the issue, appellate review is "limited to mistakes apparent on the record." *Id*. "If the record does not contain sufficient detail to support defendant's ineffective assistance claim, then he has effectively waived the issue." *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Because defendant did not move for a new trial or a *Ginther* hearing before the trial court, our review of his ineffective assistance claim is limited to mistakes apparent on the record. "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law. A judge first must find the facts, and then must decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review questions of constitutional law de novo. *Id*.

Defendant has not established that he was deprived of the effective assistance of counsel. "Effective assistance of counsel is presumed, and [a] defendant bears a heavy burden of proving otherwise." *People v McGhee*, 268 Mich App 600, 625; 709 NW2d 595 (2005). "In order to overcome this presumption, defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms." *Id*. "Second, defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different." *Id*. In the instant case, given the overwhelming evidence against defendant, he cannot show that he would have been acquitted had the details of the initial tip not been presented to the jury. Defendant has not shown that any error on the part of defense counsel was prejudicial.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Michael R. Smolenski